

MINUTES OF THE GOVERNMENT RECORDS COUNCIL FEBRUARY 10, 2004

The meeting was called to order at 9:40 a.m. at the Department of Community Affairs, Room 235A, Trenton, New Jersey. The Open Public Meetings Act statement was read.

Mr. Dice called the roll:

Present: Chairman Vincent Maltese, Virginia Hook, Bernard Spigner, and Diane Schonyers, (designee of Commissioner William Librera, Department of Education), Assistant Commissioner Charles Richman (designee of Commissioner Susan Bass Levin, Department of Community Affairs)

Mr. Maltese read a resolution to convene in closed session to receive legal advice concerning the complaints to be adjudicated that day. Mr. Richman moved to adopt the resolution that was seconded by Mr. Spigners. All members present approved the motion. The Council met in closed session from 9:40 to 11:30 a.m.

The Council reconvened in open session at 11:30 a.m. in Room 129 of the Department of Community Affairs, Trenton, New Jersey. The Open Public Meeting Act statement was read and attendees recited the Pledge of Allegiance.

Mr. Dice called the roll:

Present: Chairman Vincent Maltese, Virginia Hook, Bernard Spigner, and Diane Schonyers, (designee of Commissioner William Librera, Department of Education), Assistant Commissioner Chuck Richman (designee of Commissioner Susan Bass Levin, Department of Community Affairs)

Also Present: Deputy Attorney General Karen DuMars, Acting Executive Director Paul Dice and GRC Attorney Advisor Susan Jacobucci, Staff Associates Chris Malloy, Anthony Carbabelli, Erin Mallon, Kimberly Gardner and Gloria Luzzatto.

Mr. Maltese read into the record a statement from Commissioner Bass Levin designating Assistant Commissioner Mr. Charles Richman as her designee.

Mr. Maltese asked for the Executive Director's Report. Mr. Dice indicated that the Government Records Council made significant progress in processing cases for adjudication before the Council. He stated that 47 cases are planned for hearing before the Council in two February 2004 meetings. He added that Commissioner Susan Bass Levin has committed the necessary resources, which include the following additions to the GRC staff. In-house Council, Susan Jacobucci; Case Managers: Erin Mallon, Kimberly Gardner, and an Administrative Assistant,

Marion Davies. He stated further that an additional Council meeting would be held in March to continue to address cases that need adjudication.

Mr. Dice summarized the number of open and closed cases: 47 open cases scheduled for adjudication in February; two cases are on appeal; seven are at the Office of Administrative Law; five cases are in mediation; 46 cases are in scheduled for future adjudication and 168 cases are closed.

Mr. Maltese thanked Commission Levin and the staff for their support in moving business forward through the GRC. Mr. Maltese stated he was extremely pleased with the level of cooperation the council has received from the Commissioner. The Commissioner has promised and dedicated her staff and resources to ensure that the committee in an efficient manor serves the citizens of the state.

Communications:

Mr. Maltese asked Mr. Dice for any communications. Mr. Dice read communication received from Joseph Monzo, who served on the Council. Mr. Maltese asked Mr. Dice to respond to Mr. Monzo and thank him for his service on the council.

Mr. Maltese called for motion to adopt the minutes of the Open Session Meeting held January 8, 2004. There was a motion to accept minutes as written by Mr. Spigner, seconded by Ms. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Abstain: Mr. Richman

Mr. Maltese called for a motion to accept the minutes from the Closed Meeting of January 8, 2004. There was a motion to accept the minutes by Ms. Hook, seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Ms. Schonyers, Mr. Spigner and Mr. Maltese.

Nays: None

Abstain: Mr. Richman

Kenneth Vercammen v. Linden Police Department (2002-103)

Mr. Dice reviewed the issues in the complaint indicating the complainant challenged the denial of OPRA requests made to the Linden Police Department seeking to inspect various police records such as criminal complaints and arrest records and reports. Mr. Dice recommended to the Council that the complaint be dismissed because:

1. The October 11, 2002 request should be denied, as the request was not date specific.
2. The October 30, 2002 request should be denied, as the request was not date specific.
3. The October 31, 2002, two requests, should be denied as the request was not date specific.
4. The November 15, 2002 should be denied for two reasons, one the request was not date specific; second the request was for criminal investigatory records.
5. The November 26, 2002, should be denied these records were not in existence.
6. The December 4, 2004 request should be denied these reports are criminal investigatory records and are not subject to disclosure.

Mr. Maltese called for a motion to accept the Executive Director's recommendation. The motion was made by Ms. Hook and seconded by Mr. Mr. Richman. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Kenneth Vercammen v. City Plainfield (2002-109)

Mr. Dice reviewed the issues in the complaint indicating the complainant challenged the denial of 8 OPRA requests made to the city of Plainfield seeking to inspect various police records such as criminal complaints and arrest records and reports. Mr. Dice recommended to the Council that the complaint be dismissed because:

1. October 23, 2002 requests should be denied, as the request was not date specific.
2. October 30, 2002, requests should be denied, as the request was not date specific.
3. November 5, 2002 was filed with the municipal court, this is invalid because this is the judicial branch, and is not subject OPRA this request should be denied.
4. November 7, 2002 requests should be denied in its entirety; because arrests are criminal investigator reports are not available under OPRA.
5. December 4, 2002, requests for arrest reports between November 20, and December 9, should be denied as the request represents criminal investigatory records, i.e. arrest reports are not subject to disclosure under OPRA.
6. December 5, 2002 request for arrest reports between November 20, to December 9, should be denied as the request represents criminal investigatory reports, not subject to disclosure under OPRA.

The Custodians position inspection fees included can be disregarded because all the request seek confidential records were in valid because the request were not date specific.

Mr. Maltese called for a motion to accept the Acting Executive Director's recommendation: A motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Michael Diamond v. Old Bridge (2003-15)

Mr. Dice reviewed the issue in the case indicating that the complainant made a request to the Township of Old Bridge for records concerning the sale or trade in of weapons since 1985 within a police department and whether a special service charge of \$247.20 was warranted. The custodian responded to the requestor in a timely manner. Subsequent to filing the complaint, the requestor stated that he no longer wished to have the records. Mr. Dice recommended that the case be dismissed for the following reasons:

1. The custodian has not met its burden in explaining the “Special service charge” of \$247.20 was warranted and access should be permitted.
2. Since the requestor no longer seeks the records, the issue of providing access is moot.

Mr. Maltese called for a motion to accept the Acting Executive Director’s recommendation to dismiss the case. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Killino v. Municipal Clerk, Delran Township (2003-20)

Mr. Dice stated that this case involved a request for training records for firearms, vehicular pursuit and emergency medical service for the Delran Police Department. The custodian has certified that they have provided all the documents that are responsive to the request. Mr. Dice recommended that the case be dismissed. Mr. Maltese called for a motion to accept the Acting Executive Director’s recommendation to dismiss. A motion was made by Ms. Schonyers and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Ian Shearn v. Office of the Governor (2003-53)

Mr. Dice stated this case involved a request for the Governors’ public and private schedules since his inauguration. Mr. Dice stated that the governor’s daily private meeting schedule between his inauguration and August 1, 2002 are exempt from disclosure pursuant to N.J.S.A.

47:1A-9(b) on the grounds of Executive Order #26 and recommended that the case be dismissed. Mr. Maltese added that the advice of the Division of Law the public and private schedules of the Governor would not be subject to disclosure unless approved by the Governor.

Mr. Maltese called for a motion to accept the Acting Executive Director's recommendation. A motion was made by Ms. Hook seconded by Mr. Richman. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Christopher White v. William Paterson University (2003-80)

Mr. Dice stated that both parties voluntarily signed an agreement to mediate on January 22, 2004. Mr. Dice recommended that GRC forego any adjudicatory action pending the outcome of mediation. Mr. Maltese called for a motion to accept the Executive Directors recommendation. A motion was made by Mr. Richman and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Carfax v. Division of Motor Vehicles (2003-87)

Mr. Dice stated the case involved a request for the 2001 raw accident database of the New Jersey Motor Vehicles that included vehicle identification numbers of vehicles in accidents. He stated that under N.J.A.C. 13:18-11.3c the Division of Motor Vehicles database and information contained in it do not constitute public records. Mr. Dice recommended the case be dismissed as the denial of access to the requested information was proper pursuant to N.J.S.A. 47:1A-9 and N.J.A.C. 13:18-11.3c. Mr. Maltese entertained a motion to accept the Acting Executive Director's recommendation to dismiss. A motion was made by Ms. Hook and seconded by Ms Schonyers. The motion was adopted by roll call.

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Christopher Botta v. Borough of Ramsey (2003-102)

Mr. Dice stated the case involved a request for e-mail correspondence from the Mayor Richard Muti to the Borough of Ramsey Construction Code Official Robert Connell and find. He indicated that a letter of correspondence from the Mayor outlined the content of the e-mail and find that the requested document contained personnel information not subject to disclosure under

the provisions of OPRA, N.J.S.A. 47:1A-10. Mr. Dice recommended that the complaint be dismissed.

Mr. Maltese called for a motion to accept the Acting Executive Director's Recommendation as written. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by a roll call vote:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Kathleen Cannon v. Division of Development Disability, Dept. of Human Services (2003-96)

Mr. Dice stated that the case involved a request for major incident reports from the New Lisbon Developmental Center for the years 2000, 2001, 2002, and 2003. He indicated that the custodian maintained that the information was confidential pursuant to a series of statutes and regulations outlined in the findings and recommendations of the case. Mr. Dice recommended that the complaint be dismissed because:

1. The custodian has provided credible information that the requested records are confidential pursuant to N.J.S.A. 30:4-24.3 and N.J.A.C. 10:41-2.4, and the denial of access was in accordance with the law.
2. The requested reports are not accessible under N.J.S.A. 47:1A-1.1 and N.J.S.A. 1A-9.

Mr. Maltese called for a motion to accept the Executive Directors recommendation to dismiss the case. A motion was made by Ms. Schonyers and seconded by Mr. Richman. The motion was adopted by a roll call vote:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese.

Nays: None

Paff v. N.J. Dept of Labor (2003-98)

Mr. Dice stated that the requestor asked to close this complaint on January 22, 2004. The Acting Executive Director recommended that the case be closed. R. Maltese called for a motion to accept the Acting Executive Director's recommendation. A motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Stormes v. Sussex Borough Planning Board (2003-103, 2003 –104, 2003-105)

Mr. Dice stated that the GRC Staff have attempted to reach the complainant by Certified letter, overnight UPS delivery, and a third overnight UPS. Mr. Dice indicated that all the correspondence has been returned and we have been unable to locate Mr. Stormes. The Acting Executive Director recommended that complaint number 2003-103, 2003-104 and 2003-105 be dismissed and closed. Mr. Maltese called for a motion to accept the Acting Executive Director's recommendation to dismiss. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Christopher White v. William Patterson University (2003-109 and 2003-113)

Mr. Dice stated that both parties have requested mediation. The Acting Executive Director recommended that the Council forego any adjudicatory action pending the outcome of mediation. Mr. Maltese called for a motion to accept the Acting Executive Directors recommendation. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was adopted by a roll call:

Ayes: Ms. Hook, Mr. Richman, Ms Schonyers, Mr. Spigner and Mr. Maltese.

Nays: None

Merion v. Ho-Ho Police (2003-121)

The Acting Executive Director stated that case number 2003-121 was a duplicate file and recommended that it be closed. Mr. Maltese called for a motion to accept the Acting Executive Director's recommendation. A motion was made by Ms. Hook and seconded by Ms. Schonyers. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Jann Giacoboni v. Administrative Office of the Courts (2003-127)

Mr. Dice stated that the case involved a request for “Judge’s calendars from ACMS (Automated Case Management System) and vacation, personal time for Judge B. Mariano for various dates.” Mr. Dice stated that the GRC lacked jurisdiction over the Administrative Office of the Courts and recommended that the case be dismissed. Mr. Maltese reminded members of the Council that N.J.S.A. 47:1A-7g provided that the GRC does not have jurisdiction over the judicial or legislative branches of the state government. Mr. Maltese called for a motion to accept the Acting Executive Director’s recommendation. A motion was made by Mr. Richman and seconded by Ms. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Francis Bennett v. N.J. Department of Corrections ((2003-138)

Mr. Dice stated based on the requestor’s January 24, 2004 statement that the complaint was resolved and required no further action he recommended that the complaint be dismissed. Mr. Maltese called for a motion to accept the Acting Executive Director’s recommendation to dismiss the case. A motion was made by Mr. Spigner and seconded by Ms. Hooks. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Beverly Marinelli v. Lumberton Township (2003-141)

Mr. Dice stated that the requestor wrote to the GRC on January 22, 2004, asking that the file be closed. Based on the requestor’s statement, Mr. Dice recommended that the complaint be dismissed. Mr. Maltese called for a motion to accept the Acting Executive Director’s recommendation. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Mitchell Rait, Esq. v. N.J. Department of Environmental Protection (2003-145)

Mr. Dice stated that on February 4, 2004 the requestor withdrew his complaint via a letter. The Acting Executive Director recommended that the Council dismiss the complaint.

Mr. Maltese called for a motion to dismiss the complaint as recommended. A motion was made by Mr. Spigner and seconded by Mr. Richman. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Sandra Horner v. Delanco Township (2004-3)

Mr. Dice stated that both parties signed an agreement for mediation on January 21, 2004 and the parties resolved the case on January 28, 2004. The Acting Executive Director recommended that the Council dismiss the complaint on the grounds that the parties resolved the complaint in mediation. Mr. Maltese called for a motion to dismiss the complaint. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Janice Jackson v. Kean University (2002-98) Continuation

Mr. Dice stated that the Council considered the case at the January 8, 2004 meeting and the Council ordered disclosure of the records and a certification from the custodian stating the information sent to the requestor represented the entirety of what Kean University had on record that was responsive to the complainant's request. Mr. Dice informed the Council the custodian provided the requested certification and recommended that the complaint be dismissed. Mr. Maltese called for a motion to accept the Acting Executive Director's recommendation. A motion was made by M. Hook and seconded by Mr. Schonyers. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Douglas Wicks v. Bernard Township Board of Education (2002-107)

Mr. Maltese recused himself from this case. Mr. Dice stated that the council considered this complaint at the December 11, 2003 meeting, subsequently issued at December 30, 2003 Revised Final Decision on Access. He indicated that the custodian provided the requestor with the billing records on December 1, 2003. On February 4, 2004, in response to Mr. Dice's request, the custodian's counsel provided a certification on behalf of the custodian stating that "The documents that the Board has, or has access to, which are responsive to Mr. Wick's

October 28, 2002 request, and disclosable pursuant to the provisions of the Open Public Records Act, have been provided to Mr. Wicks.” Mr. Dice stated that the custodian complied with the Council’s Order and recommended that the complaint be dismissed. Mr. Maltese called for a motion to accept the Acting Executive Director’s recommendation to dismiss the complaint. A motion was made by Ms. Schonyers and seconded by Ms. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner

Nays: None

Recused: Mr. Maltese

Gregory Perry v. Dept of Corrections (2003-32) Continuation

Mr. Dice stated that the Council considered the case at its January 8, 2004 meeting and voted to have an in camera proceeding at the February 10, 2004 meeting with the custodian to review the written outline of the training session conducted by the department’s attorneys for disciplinary hearing officers and supervisory staff and to have the custodian respond to a knowing and willful violation of OPRA. Mr. Dice noted that based on legal advice sought in the case following the January 8, 2004 meeting, he recommended that the Council find:

1. That the outline of the training session conducted by the department’s attorneys for disciplinary hearing officers and supervisory staff is attorney-client privileged as it represent legal counsel provided to the Department of corrections and there is no basis for testimony or an in camera proceeding.
2. The custodian’s testimony before the Council regarding the issue of a potential knowing and willful violation would jeopardize her right to an evidentiary hearing to which she is entitled and the Council should request a certification from the custodian to determine whether a plenary hearing should be arranged.

Mr. Maltese asked Mr. Dice to secure a statement from the custodian certifying that the information contained in the training manual is attorney client privilege and the reason she is making that claim. Mr. Maltese indicated that the Council would re-visit the case at the next Council meeting in February. Mr. Maltese called for a motion to require the custodian of the Dept. of Correction to supply the Council by the next meeting with a certification confirming that the information contained in the training manual is attorney client privilege and the reasons for that ascertain. A motion was made by Ms. Hook and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Newark Morning Star Ledger v NJSEA (2003-44) Continuation

Mr. Dice stated the complaint was heard at the January 8, 2004 meeting and the New Jersey Sports and Exposition Authority has confirmed to the GRC that it has complied with the Council's Order to give the Star-Ledger access to the turnstile numbers for the Continental Arena relating to the Nets and Devils. With respect to the remaining issue of requestor's attorney's fees as the requestor is the prevailing party, Mr. Dice stated the requestor's attorney submitted their application for attorney's fees. In reviewing the application, Mr. Dice indicated that a more detailed description of the services rendered with corresponding time expended for each service was needed. The Acting Executive Director noted that on February 2, 2004 the requestor's attorney was asked to provide the following information:

1. "copies of weekly time sheets for each person in 0.1 increments (6 minutes)
2. Evidence that the rates charged is in accordance with prevailing market rates in the 'relevant community', taking into account the skill level, similar experience and reputation."

The Acting Executive Director recommended that the Council forego further adjudicatory action until the requestor's attorney provides the information requested to the GRC and the custodian and its counsel have an opportunity to review same.

Mr. Maltese suggested that the information provided also include copies of all time sheet for any professional that worked on the matter. Mr. Maltese called for a motion to accept the Executive Director's recommendation to forego further adjudicatory action until the requestor provides the information requested by the Council. A motion was made by Ms. Schonyers and seconded by Mr. Spigner. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Larry Loigman v. Monmouth County Prosecutor's Office (2003-44) Continuation

Mr. Dice stated that the case was a follow-up to what the Council considered at its January 8, 2004 meeting:

1. The requestor has the right to inspect the records and not receive copies if he so chooses.
2. The custodian shall not charge an extraordinary labor charges given that the rationale for applying such charges.
3. Should the requestor require copies of all or parts of the subject documentation, such charges, pursuant to N.J.S.A. 47:1A-5(b), shall not exceed \$79.75.

Mr. Dice stated that the parties have not gotten together to resolve this situation.

The Acting Executive Directors recommended that the Council:

1. Provide the parties with ten business days from the date of receipt of the order written for February 10, 2004 meeting to finalize their positions with respect to the Council's January 8, 2004 Supplemental Order. Such positions must be provided in writing to the Acting Executive Director by the close of said ten-day timeframe.
2. Direct the Acting Executive Director to process any issues identified by the parties in regard to the January 8, 2004 Supplemental Order in the normal course of administrative action.
3. Find that a lack of presentation of issues within the ten-day timeframe stated in "1" above will result in the Council's dismissal of this complaint.

Mr. Maltese stated the parties should be given ten business days to meet and five calendar days thereafter for written responses. Mr. Maltese called for a motion to accept the Acting Executive Director's recommendation as modified. A motion was made by Ms. Schonyers and seconded by Ms. Hook. The motion was adopted by roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Trenton Times v. Dept. of Law, Division of Criminal Justice (2003-78) Continuation

Mr. Dice stated the Council considered this matter at the January 8, 2004 meeting. The Council directed Mr. Dice elicit a certification from the custodian stating why the membership roster and membership applications to the Baron Athletic Association are not subject to N.J.S.A. 47:1A-3(b). He stated that the GRC received a response from the custodian's counsel on January 22, 2004 that was responsive to the Council's Interim Decision. The Acting Executive Director recommended that the complaint be dismissed because the requestor's May 13, 2003 OPRA request sought records, not information and the custodian properly denied access pursuant to N.J.S.A. 47:1A-1.1 and 3(b). Mr. Maltese stated that because the information was categorized as a criminal investigatory record, it was proper for the custodian to deny access. Mr. Maltese called for a motion to accept the Acting Executive Director's recommendation to dismiss complaint. A motion was made by Ms. Hook and seconded by Mr. Richman. The motion was adopted by a roll call:

Ayes: Ms. Hook, Mr. Richman, Ms. Schonyers, Mr. Spigner and Mr. Maltese

Nays: None

Mr. Maltese opened the meeting to the public. There were no public comments. Mr. Maltese called for a motion to close the public portion and a motion to adjourn the meeting at 12:37 p.m.

The motion was made by Ms. Hook and seconded by Mr. Richman. The motion was approved by consensus.

Respectfully submitted,

/s/Virginia Hook, Secretary